

MEMORANDUM

STATE OF ALASKA Office of the Governor Division of Governmental Coordination

TO: Coastal Policy Council

DATE: July 8, 2002

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SUBJECT: Proposed Regulation Revisions to Alaska Administrative Code (AAC), Title 6, Chapter 50, Process for Consistency Determination, Review, and Petition for Coastal Management

The Division of Governmental Coordination, in cooperation with the Alaska Coastal Management (ACMP) Working Group members, representatives from coastal resource districts, the Department of Law, state resource agency staff, DGC staff, and interested members of the public, has drafted proposed regulatory revisions to the consistency review process at 6 AAC 50. The purpose of the regulation revisions are to implement, interpret, and make specific Alaska Statute (AS) 44.19 and AS 46.40 with regard to the consistency review process, and includes the amendment, repeal, and re-adoption of certain sections, and the addition of new sections to 6 AAC 50. DGC presents the proposed regulation revisions to the Council for review and approval.

SUMMARY OF THE JUNE 19-21, 2002 COUNCIL MEETING

At the June 19-21, 2002 Coastal Policy Council (Council) meeting in Anchorage, DGC presented the proposed regulations at 6 AAC 50 to the Council for review and consideration. Instead of asking for the Council's action to approve the proposed regulations, DGC recommended that the Council hear the testimony offered by the public at the hearing and allow DGC the opportunity to rework the proposed regulations based on and in consideration of the public testimony (oral and written). The Council took no action to approve the proposed regulations, heard the testimony offered by the public, and directed DGC to rework the specific sections within the proposed regulations that remained problematic and the substance of the public testimony.

This Memorandum and the redrafted proposed regulations contained in this package, along with the regulatory information and material contained in the June 19-21, 2002 Council meeting packet, serve as the reference documents for the 6 AAC 50 consistency review regulatory revision effort.

SUMMARY OF PROPOSED REGULATION REVISIONS

Overall Changes – The proposed regulations, as included in your package (dated July 8, listed as draft_dgc_16), are a redraft of the proposed regulations that were the subject of the June 2002 Council hearing, and represents the entirety of the proposed regulatory amendments. Included in the packet are the current regulations and the proposed regulations, with special font to highlight the changes that are proposed. In the draft,

- new proposed regulation sections are preceded with the phrase "6 AAC 50 is amended by adding a new section to read:" and are presented in normal font
- Sections and text that have minor proposed changes (from current to proposed) are preceded with the phrase "6 AAC 50.XX is amended to read:" and the changes are presented with new proposed text underlined, and deleted text [BRACKETED AND IN CAPITALS].
- Current sections that are proposed for repeal are preceded with the phrase "6 AAC 50.XX is repealed:" with the repealed text font *minimized and italicized*.

Recent/Specific Changes – Specifically included in this package are the amendments proposed by DGC to address the concerns raised during the Council's June 2002 public hearing, as well as changes that were needed for clarity and/or technical correctness¹. The specific amendments contained in this redraft can be generally characterized by the following:

- Additional clarifications to address the geographic applicability of the consistency review process – 6 AAC 50.005
- Clarifying language to better address how a district enforceable policy may be considered during the determination of the scope of a project subject to review – 6 AAC 50.025
- The articles and sections dealing with review participant comments and the development of the proposed and final consistency determinations to clarify the role, function, and rationale for the consistent/inconsistent finding and alternative measures – 6 AAC 50.255, .260, .265, .365, .375, .385, .465, .475, .485, et al
- The coordinating agency's ability to modify the review schedule for a "complex issue" has been deleted; the ability for the coordinating agency to modify the review schedule to address a legally conflicting issue has been included – 6 AAC 50.280
- Based on the language in SB 371, direction from the Governor's Office, and advice from the Department of Law, amendments to 6 AAC 50.700(a) were made to clarify the language relating to the scope of the project subject to review when the project requires a general or nationwide permit – 6 AAC 50.700(a)
- Definitions that added little value or clarity to the package have been deleted, other terms that needed to be defined are included – 6 AAC 50.990
- Other technical and editorial amendments

¹ The proposed regulations included in your package are a legal markup of the proposed regulations versus the current regulations. The specific amendments developed between this draft (July 8, 2002) and the last draft (June 2002) are not highlighted. You may access a marked up copy of those changes by downloading the draft from the DGC website at <http://www.gov.state.ak.us/dgc/Regulations/regsupupdate.html>, or contacting DGC via the information on the Memorandum header.

The package of draft regulatory revisions before you now is reflective of the most recent testimony (oral and written) that was delivered/submitted during the June 19-21, 2002 Council hearing. The package and drafting process has benefited from more than three years worth of meetings, discussions, reviews, and comment opportunities on the issues surrounding and related to the consistency review process and this regulatory revision effort. This package meets with the goals that DGC established when originally planning this revision effort:

- Provide up-to-date regulations that are clear and efficient
- Establish and clarify the process to evaluate a proposed project against the enforceable policies of the ACMP
- Create a predictable consistency review process for proposed development project.

FURTHER APPROVAL PROCESSES

Following Council review and approval of the regulatory revisions, the package will be submitted to the Department of Law for legal, editorial, and technical review. Following the Department of Law review, the package will be sent to OCRM for a 28-day public review as a "routine program change" to the ACMP (15 C.F.R. 930). Upon OCRM approval, the package will be forwarded to the Lieutenant Governor's Office for filing, and will become effective 30 days later.

RECOMMENDATION

The DGC recommends the Coastal Policy Council adopt the regulatory revisions to the consistency review regulations at 6 AAC 50.